

CITY OF SPOKANE HEARING EXAMINER

Re: Conditional Use Permit Application by the) FINDINGS, CONCLUSIONS,
City of Spokane Engineering Services to) AND DECISION
allow the construction of a new booster)
station at 6910 N. Belt Street) FILE NO. Z18-951CUP3

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Spokane Engineering Services seeks a conditional use permit authorizing the construction of a new booster station (a Basic Utility) in a Residential Single-Family Zone. The project consists of a new 3,200 square foot (40' x 80') concrete masonry building, along with along with associated equipment and piping, electrical work, and landscape restoration.

Decision: Approved, with conditions.

FINDINGS OF FACT
BACKGROUND INFORMATION

Applicant/ City of Spokane Engineering Services
Owner: 808 West Spokane Falls Boulevard
Spokane, WA 99201

Agent: Dan Buller, P.E.
City of Spokane, Engineering Design
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Property Location: The proposed site is located at 6910 N. Belt Street, in the SE ¼, Section 25, Township 26 North, Range 42 East, W.M.

Legal Description: The legal description is provided in the General Application, included in the record as Exhibit 2A.

Zoning: The property is zoned RSF (Residential Single-family).

Comprehensive Plan Map Designation: The property is designated as Residential 4-10 in the city's Comprehensive Plan.

Site Description: The site is 20 acres in size. The site contains an existing booster station near the western property line and a water tank. The site is gradually slopes to the south. The steepest grade on the site is approximately 10%. The site contains trees and grass, and is fenced around the perimeter.

Surrounding Conditions and Uses: The land to the west, east, and north of the site is zoned Residential Single-Family (RSF). All of these areas are developed with single-family residences. To the south of the western half (roughly) of the site is a church. The church property is also

zoned Residential Single-Family. To the south of the eastern half (roughly) of the site is an area that is zoned Residential Multi-Family. That land is developed with multi-family residences.

Project Description: The City of Spokane Engineering Services is proposing a new booster station on its property located at 6910 N. Belt Street. There is an existing booster station, approximately 1,000 square-feet in size, at the property. The new booster station will be larger, at approximately 3,200 square-feet (40' x 80') and is intended to replace the existing facility. Once the new booster station is fully operational and tested, the existing booster station will be demolished. It is anticipated that the existing booster station will be removed approximately one year after the new station is constructed. The new booster station will be set back approximately 120 feet from Belt Street, and southeasterly of the existing station. Access to the new building will be moved to the south of the existing driveway, near the intersection of Belt and Woodside, with a new curb cut proposed off of Belt. The project will include interior and exterior piping, installation of water booster pumps and motor control center, and associated excavation, site grading, restoration, and electrical work.

PROCEDURAL INFORMATION

Authorizing Ordinances: Spokane Municipal Code ("SMC") 17C.110, Residential Zones; SMC 17C.320.080(F), Conditional Use Criteria, and SMC 17G.060.170, Decision Criteria.

Notice of Community Meeting: Mailed: November 27, 2018
Posted: November 27, 2018

Notice of Application/Public Hearing: Mailed: January 18, 2019
Posted: January 18, 2019

Community Meeting: December 11, 2018

Public Hearing Date: February 14, 2019

Site Visit: February 13, 2019

SEPA: A Determination of Nonsignificance ("DNS") was issued by the City of Spokane Engineering Department on June 4, 2018. Any appeal of the DNS was due on June 18, 2018. No appeal was filed.

Testimony:

Ali Brast, Assistant Planner
City of Spokane Planning & Development
808 West Spokane Falls Boulevard
Spokane, WA 99201

Dan Buller, P.E.
City of Spokane Wastewater Department
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Exhibits:

1. Planning Services Staff Report
2. Application, including:
 - 2A General application
 - 2B Conditional Use application

- 2C Notification Map application
- 2D Site Plan dated 12-20-18
- 2E Grading and Restoration Plan dated 12-20-18
- 2F Drawing of proposed building
- 3. Request for Comments letter dated 12-24-18
 - 3A Engineering dated 12-27-18
 - 3B Treasury dated 01-03-18
 - 3C Spokane Clean Air dated 02-08-19
 - 3D Department of Ecology dated 01-08-19
- 4. Determination of Nonsignificance "DNS" dated 06-04-18
 - 4A Environmental Checklist dated 11-28-18
 - 4B SEPA Amendment dated 01-22-19
- 5. Notice Map
- 6. Parcel Listing
- 7. Notice of Community Meeting instructions dated 11-09-17
 - 7A Notice of Community Meeting
 - 7B Affidavit of Mailings dated 11-07-18
 - 7C Affidavit of Posting property dated 11-27-18
 - 7D Affidavit of Posting dated 11-27-18
 - 7E Affidavit of Removal of Public Sign dated 12-12-18
 - 7F Community Meeting Sign in Sheet
 - 7G Community Meeting Presentation
 - 7H Community Meeting Overview
- 8. Notice of Application Instructions dated 01-14-19:
 - 8A Notice of Application & Public Hearing
 - 8B Affidavit of Mailings dated 01-18-19
 - 8C Affidavit of Posting on property dated 01-18-19
 - 8D Affidavit of Posting dated 01-18-19
- A Exhibits received at the hearing:
 - A-1 Hardcopy of Planning's PowerPoint presentation

FINDINGS AND CONCLUSIONS

A. Conditional Use Permit

To be approved, the proposed conditional use permit must comply with the criteria set forth in Spokane Municipal Code sections 17G.060.170 and 17C.320.080(F). The Hearing Examiner has reviewed the proposed conditional use permit and the evidence of record with regard to the application and makes the following findings and conclusions:

1. *The proposal is allowed under the provisions of the land use codes. See SMC 17G.060.170(C)(1).*

The project site is zoned Residential Single Family ("RSF"), a residential category. The uses allowed in the residential zones are shown on Table 17C.110-1. See SMC 17C.110.110. The table does not specifically identify booster stations or related infrastructure among the regulated uses. See Table 17C.110-1. However, those uses are elsewhere identified as Basic Utilities, an institutional category of use. See Exhibit 1, p. 3. Examples of Basic Utilities include water and sewer pump stations, sewage disposal and conveyance systems, water towers and reservoirs, water quality and flow control facilities, water conveyance systems, and stormwater

facilities and conveyance systems. See SMC 17C.190.400(C). SMC 17C.110.110 provides that any new buildings which house a basic utility are required to obtain a conditional use permit which is processed as a Type III application. See Exhibit 1, p. 3; see also SMC 17C.110.110(C).

The land use codes permit Basic Utilities, such as the proposed project, to be constructed in the RSF zone, so long as the project satisfies the criteria for a conditional use and the other development standards in the municipal code. The Hearing Examiner finds that this criterion is satisfied.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. See SMC 17G.060.170(C)(2).*

The project site has a Residential 4-10 designation under the comprehensive plan. While the provisions describing this land use designation do not directly address utilities, residential uses and developments certainly require adequate infrastructure for water service. There are various provisions in the comprehensive plan that directly support this premise.

For example, the first goal of the Land Use element of the comprehensive plan memorializes the objective of providing coordinated, efficient, and cost effective public facilities and utility services. See Comprehensive Plan ("CP"), Goal LU 1, Citywide Land Use. Policy 1.12 of the Land Use element recognizes that adequate public facilities and systems must exist to accommodate proposed development, and must be installed before development is permitted to occur. See CP, Policy LU 1.12, Public Facilities and Services.

Similarly, the Capital Facilities element calls for the city to provide and maintain adequate public facilities and utility services, as well as to ensure reliable funding is in place to protect the public's investment in this infrastructure. See CP, Goal CFU 1, Adequate Public Facilities and Services (also noting that such investments ensure adequate levels of service). Policy CFU 1.2 of the Capital Facilities Element further provides as follows:

Require the development of capital improvement projects that either improve the city's operational efficiency or reduce costs by increasing the capacity, use, and/or life expectancy of existing facilities.

See CP, Policy CFU 1.2, Operational Efficiency. In addition, CFU 1.3 calls for the maintenance, rehabilitation and renovation of existing facilities. See CP, Policy CFU 1.3, Maintenance.

The project satisfies the foregoing goals and policies by providing a more reliable drinking water and fire suppression supply to the area. See Exhibit 1, p. 3. The Hearing Examiner finds that the project is consistent with the goals and policies of the comprehensive plan, and therefore this criterion is satisfied.

3. *The proposal meets the concurrency requirements of Chapter 17D.010SMC. See SMC 17G.060.170(C)(3).*

The decision criteria for Type III decisions (such as a conditional use permit) mandate that all proposals satisfy the concurrency requirements under SMC 17D.010. See SMC 17G.060.170(C)(3). Under the concurrency standards, facilities for public water must be evaluated for concurrency. See SMC 17D.010.010(B). Accordingly, on December 24, 2018, a Request for Comments on the application was circulated to all City departments and outside agencies with jurisdiction.

The city received limited responses to its request for comments. See Exhibits 3A-3D. Upon reviewing the comments, City staff noted that "...there were no departments or agencies that reported that concurrency could not be achieved." See Exhibit 1, p. 3. To the extent that there was a lack of substantive comments from departments and agencies with jurisdiction, the Hearing Examiner must conclude that concurrency standards are satisfied. See SMC 17D.010.020(B)(1); see also Exhibit 3.

A review of the record confirms that there is no substantive evidence that the project transgresses any concurrency requirements. There was no testimony at the public hearing suggesting that the concurrency standards would not be satisfied. The proposal, by its nature, does not place substantive demands on public infrastructure. The project does not have any discernible effect on public services such as fire, police, or schools. See Exhibit 4A (Environmental Checklist ¶ B(15)). If anything, the proposal improves public facilities by increasing the city's capacity to provide water. See *id.*

The Hearing Examiner finds that the project satisfies the concurrency requirements of the municipal code. Therefore, this criterion for approval of the conditional use permit is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. See SMC 17G.060.170(C)(4).*

The site is rectangular with a gradual slope to the south. See Exhibit 1, p. 4. However, the proposed location of the new building is on a relatively flat portion of the site. See *id.* The project will not include any change to the topography of the site. See *id.*

City of Spokane water infrastructure has been housed at this site for approximately 50+ years. See Exhibit 1, p. 4. It would seem to be apparent, then, that the size, shape, location, and other physical characteristics of the property are suitable for the use. There was no contrary evidence in this record.

There is no surface water on this site, and no impacts to surface water are anticipated. See Exhibit 4A (Environmental Checklist ¶ B(3)(a) & (c)(2)). It is acknowledged that the site is located within the Aquifer Critical Area Recharge Zone and must comply with the aquifer protection measures contained in SMC 17E. See Exhibit 1, p. 4. However, no impacts to groundwater are anticipated from this project. See Exhibit 4A (Environmental Checklist ¶ B(3)(b) & (c)(2)).

The project does not alter drainage patterns from the site. See Exhibit 4A (Environmental Checklist ¶ B(3)(c)(3)). The site stormwater will be collected, treated, and disposed of in accordance with the Spokane Regional Stormwater Manual. See Exhibit 4A (Environmental Checklist ¶ B(3)(c)(1) & (d)).

There are no known cultural or historic resources on this site that warrant against approval of the proposal. See Exhibit 4A (Environmental Checklist ¶ B(13)).

The Hearing Examiner concludes that this criterion for approval is satisfied.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effect or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use. See SMC 17G.060.170(C)(5).*

The environmental review process, completed pursuant to the State Environmental Policy Act, demonstrates that the project will not have significant environmental impacts. To the extent certain impacts occur or may occur, those impacts can be addressed adequately through appropriate mitigation measures.

On or about November 28, 2018, the City of Spokane prepared an environmental checklist, pursuant to the State Environmental Policy Act, for this project. See Exhibit 4A (Environmental Checklist). The checklist supports the conclusion that this project will not have significant impacts on the environment or the surrounding properties. For example, there are no wetlands or streams on the site. See Exhibit 4A (Environmental Checklist ¶ B(3)(a)(1)). The property does not lie within a 100-year floodplain. See Exhibit 4A (Environmental Checklist ¶ B(3)(a)(5)). No waste materials will be discharged into the ground or into surface waters. See Exhibit 4A (Environmental Checklist ¶¶ B(3)(b)(2) & B(3)(c)(2)). There will be a 1,000 gallon diesel tank on the site to provide fuel for the backup generator. See Exhibit 4B (SEPA Amendment, 1-22-19). However, no environmental hazards (e.g. exposure to toxic chemicals, risk of fire or explosion, hazardous wastes, etc.) are anticipated to arise due to this project. See Exhibit 4A (Environmental Checklist ¶ B(7)(a)). No threatened or endangered species were identified on the site. See Exhibit 4A (Environmental Checklist ¶¶ B(4)(c) & B(5)(b)).

On June 4, 2018, the City of Spokane Engineering Services, as lead agency, issued a Determination of Non-significance ("DNS") for the project. See Exhibit 4. Any appeal of the DNS was due on June 18, 2018. See *id.* No appeal of the DNS was filed.

There was no substantive evidence that environmental impacts made the project unfeasible or materially problematic. The SEPA process clearly supports the premise that the project will not have significant impacts on the environment. No one appealed the DNS. There was no testimony or evidence at the public hearing establishing that there were significant impacts overlooked in the SEPA review.

For the foregoing reasons, the Hearing Examiner concludes that the project will not have significant impacts on the environment, which cannot be adequately addressed through mitigation. Therefore, this criterion for approval of the conditional use permit is satisfied.

6. *The overall residential appearance and function of the area will not be significantly lessened due to the construction of utilities and infrastructure. The project will not result in the construction of improvements that are disproportionate to the residential household uses in the surrounding area. See SMC 17C.320.080(F)(1).*

The residential appearance and function of the area will not be significantly impacted by the proposed project. The proposal will result in the construction of one relatively small building, being 40' x 80' in size. The height of the structure will only be 15-20 feet (approximately). *Testimony of D. Buller.* Such structures will fit the scale of the buildings in the neighborhood. The building will be set back about 120 feet from Belt Street, and will be screened by trees.

The structure is quite small given the size of the property, and thus will not be excessively bulky, disproportionate, or out of place. The project is well designed to fit the site and the surroundings. See e.g. Exhibits 2D-2F. The project is also required to satisfy the criteria for institutional uses in residential areas. See SMC 17C.110.500.

The site has been used for water utilities for several decades. The use has not proven to be any sort detriment to the neighborhood. In the Hearing Examiner's view, the nature and design of this utility project ensures that, upon completion, the site and use will be compatible with nearby residential neighborhoods. The Hearing Examiner concludes that this criterion for approval is met.

7. *The proposal will be compatible with the adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping. The proposal will mitigate the differences in appearance or scale through such means as setbacks, screening, landscaping and other design features. See SMC 17C.320.080(F)(2).*

As stated above, the proposed building is relatively small, being about 3,200 square feet in size and only 15-20 feet tall. The building is not disproportionate in comparison to the area residences, and is very small relative to the size of the site. The proposed building will be set back 120 feet from the street and will be screened by trees. Some care will be taken to ensure that the style of the structures is compatible with the neighborhood, as a result of the applicable design standards. The combination of relatively small size, design features and landscaping should be sufficient to minimize the impact to the neighborhood. The Hearing Examiner therefore concludes that the project is compatible with surrounding residential neighborhoods.

8. *The proposal will not have significant adverse impacts on the livability of nearby residential lands due to noise, glare, late-night operations, odors and litter, or privacy and safety issues. See SMC 17C.320.080(F)(3).*

This city has operated water utilities on the site for decades. There is no evidence in the record that these operations have undermined the livability of nearby residential lands, infringed upon anyone's privacy, created safety hazards, or caused impacts like noise, glare, odors, or litter. There is little reason to suspect that these problems will arise from the replacement of one booster station.

Given the nature of the utilities on the site, there is no reason to anticipate ongoing impacts on neighbors of the site. Operational activity on the site will be of very low intensity. The project will result in a negligible number of vehicle trips to or from the site. *Testimony of D. Buller.* Any lights on the building will be shielded to comply with the requirements of the municipal code. See SMC 17C.110.520. Thus, no particularly noticeable light or glare will be generated by this project. See Exhibit 4A (Environmental Checklist ¶ B(11)). No regular night operations are proposed. *Testimony of D. Buller.* There will be no operations carried on at the site that would generate odors or litter. See *id.* There was no testimony or evidence offered at the public hearing to suggest that such impacts were a probable result of this project.

The new booster station will house pumps. Those pumps will generate sound and could be the source of some noise. However, the pumps will be completely enclosed inside the building and the building will be insulated. See Exhibit 1, p. 5. The new building will also be set back approximately 120 feet from the street. The enclosure of the pumps, insulation, and distance to the street should together act to mitigate the potential impact from noise. See *id.*; see also *Testimony of D. Buller.* The only other source of noise would be by construction activities, and

perhaps the occasional utility vehicle accessing the site. The construction noise is temporary, and will cease when the project is completed. The vehicle noise is not a material factor, as the traffic to and from the site is too small to create a substantive impact.

The proposal itself does not raise any concerns about privacy or safety, and there was no evidence or testimony suggesting any ways in which the new booster station could create such concerns.

The Hearing Examiner concludes that this criterion for approval has been satisfied.

9. *The proposed use is in conformance with the street designations of the transportation element of the comprehensive plan. The transportation system is capable of supporting the proposed use in addition to existing uses in the area, upon consideration of the evaluation factors provided in the municipal code. See SMC 17C.320.080(F)(4).*

The proposal is to construct utility infrastructure. As a result, factors such as connectivity, circulation, and transit availability are not particularly relevant to the proposal or the nature of the use. Traffic generated from the utility operation is minimal. *Testimony of D. Buller.* It is estimated that there will be one or less trips per day to the site. See Exhibit 4A (Environmental Checklist ¶ B(14)(f)). Undoubtedly for this reason, no traffic study was required for this proposal. See *id.*

The area transportation system will easily accommodate the proposed use. The project does not decrease the level of service of any adjacent street. See Exhibit 1, p. 6. No improvements to the transportation system are necessitated because of this proposal. See Exhibit 4A (Environmental Checklist ¶ B(14)(d)).

As discussed above on the issue of concurrency, there are adequate public services to support the proposed use. In fact, with respect to water service, the project is intended to increase the capacity and performance of public services.

The proposal is consistent with the transportation element of the comprehensive plan, and therefore this criterion to approve a conditional use is satisfied.

DECISION

Based on the findings and conclusions above, it is the decision of the Hearing Examiner to approve the proposed conditional use permit subject to the following conditions:

1. Approval is for a conditional use permit to allow the City of Spokane Engineering Services to replace the existing booster station located at 6910 N. Belt Street. The project will be constructed substantially as set forth in the plans and application on file in the Planning and Development Department.
2. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with and limit the negative impacts on surrounding residential areas.
3. Natural landscaping for replacement purposes shall be replanted on the site where disturbed during construction. Additionally, for screening purposes, trees shall be planted between the building and the street.

4. If the proposed back-up generator has an engine rated above 500 bhp, an air quality permit is required from Spokane Regional Clean Air.
5. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services should be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or archaeological resources in Washington.
6. This approval does not waive the Applicant's obligation to comply with all of the requirements of the Spokane Municipal Code including the International Codes, as well as requirements of City Departments and outside agencies with jurisdiction over land development.
7. This project must adhere to any additional performance and development standards documented in comments or required by the City of Spokane, the County of Spokane, the State of Washington, and any federal agency.
8. Spokane Municipal Code section 17G.060.240 regulates the expiration of this approval, and Table 17G.060-3 sets forth the time frame for the expiration of all approvals.
9. Prior to the issuance of any building or occupancy permits, the Applicant shall submit evidence to this file that the property owner has signed and caused the following statement to be recorded with the Spokane County Auditor's Office.

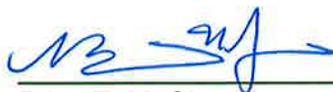
COVENANT

Development of this property is subject to certain conditions on file with the City of Spokane Planning Department and the Office of the City of Spokane Hearing Examiner. The property may not be developed except in accordance with these conditions. A copy of these conditions is attached to this Covenant.

This statement shall be identified as a Covenant. The owner's signature shall be notarized.

10. This approval is subject to the above-stated conditions. By accepting this approval the Applicant acknowledges that these conditions are reasonable and agrees to comply with them. The filing of the above required covenant constitutes the Applicant's written agreement to comply with all conditions of approval. The property may not be developed except in accordance with these conditions and failure to comply with them may result in the revocation of this approval.

DATED this 19th day of February, 2019.



Brian T. McGinn
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner are governed by Spokane Municipal Code 17G.060.210 and 17G.050.

Decisions by the Hearing Examiner regarding conditional use permits are final. They may be appealed by any party of record by filing a Land Use Petition with the Superior Court of Spokane County. **THE LAND USE PETITION MUST BE FILED AND THE CITY OF SPOKANE MUST BE SERVED WITHIN TWENTY-ONE (21) CALENDAR DAYS OF THE DATE OF THE ISSUANCE OF THE DECISION.** Pursuant to RCW 36.70C.040(4)(a), the date of the issuance of the decision is three days after a written decision is mailed by the local jurisdiction. This decision was mailed on February 19, 2019. **THEREFORE, THE DATE OF THE LAST DAY TO APPEAL IS THE 15th DAY OF MARCH 2019 AT 5:00 P.M.**

In addition to paying any Court costs to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.

Pursuant to RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.